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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN JOSE DIVISION**

12 SECURITIES AND EXCHANGE
COMMISSION,

13 Plaintiff,

14 vs.

15 SMALL BUSINESS CAPITAL CORP.;
16 MARK FEATHERS; INVESTORS PRIME
FUND, LLC; and SBC PORTFOLIO FUND,
17 LLC,

18 Defendants.

Case No. 5:12-CV-03237-EJD

**PLAINTIFF SECURITIES AND
EXCHANGE COMMISSION'S
STATEMENT OF POSITION REGARDING
RECEIVER'S MOTION FOR APPROVAL
OF SALE OF 504/FMLP LOAN
PORTFOLIO AND NON-SBA LOANS (Dkt.
No. 988)**

Date: January 8, 2015

Time: 9:00 a.m.

Place: Courtroom 4, 5th Floor
(Hon. Edward J. Davila)

1 Plaintiff Securities and Exchange Commission ("SEC") supports the motions of Thomas A.
2 Seaman, Receiver for Small Business Capital Corp. ("SBCC"), Investors Prime Fund, LLC ("IPF"),
3 SBC Portfolio Fund, LLC ("SPF"), and their subsidiaries and affiliates including Small Business
4 Capital, LLC ("SBC LLC") and SBC Commercial Mortgage Fund, LLC ("SCMF"), for approval of
5 the sale of two assets: (a) interests in a loan portfolio consisting of Small Business Administration
6 ("SBA") First Lien Position 504 Loans ("504 Loans"), at 110% of the aggregate retained portion of
7 the principal as of the date of the sale; and (b) three loans which are not guaranteed or governed by
8 SBA regulations ("Non-SBA Loans"), at 60% of the aggregate outstanding principal value as of the
9 date of the sale. (Dkt. No. 988-990).

10 The 504 Loans are stable and secured by adequate collateral, are performing, yield loan
11 servicing income, and are at interest rates that may be higher than current prevailing rates. In
12 addition, the 504 Loans are guaranteed by the SBA which enhances their value. This combination
13 of factors allowed the Receiver to obtain bids from interested parties at a premium to the
14 outstanding retained portion of the principal. Thus, loans with a retained aggregate principal of
15 approximately \$6,239,987.90 at the time of the proposed sale will be sold for 110% of that amount,
16 or about \$6,863,986.69.

17 Unfortunately, Defendants did not limit the portfolio to loans guaranteed by the SBA. The
18 Non-SBA Loans that were made by Defendants are not guaranteed by the SBA, and are either not
19 fully secured or are unsecured. This combination of factors makes them riskier investments with
20 less value in the secondary market. As a result, the Receiver received bids at a discount to the
21 outstanding balance of the Non-SBA Loans. Thus, loans with an aggregate outstanding principal
22 balance of approximately \$2,065,385.93 will be sold for 60% of the balance, or \$1,239,231.55.

23 On balance, the proposed sale of these two assets should net the Receivership, after the
24 broker commission, slightly over \$8 million. Unfortunately, the loss from the sale of the risky and
25 under-secured Non-SBA Loans counterbalances the premium from the sale of the guaranteed 504
26 Loans. However, the entire transaction allows the Receiver to realize over 95% of the value of
27 these assets held by the Receivership Entities, while also protecting the investors from losses on the
28

1 Non-SBA Loans. The SEC believes that this is a positive result for the investors and therefore
2 supports the proposed sale.

3
4 DATED: December 18, 2014

Respectfully submitted,

5
6 /s/ John B. Bulgozdy

John B. Bulgozdy

Lynn M. Dean

Attorneys for Plaintiff

SECURITIES AND EXCHANGE COMMISSION

PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is:

[X] U.S. SECURITIES AND EXCHANGE COMMISSION, 444 South Flower Street, Suite 900, Los Angeles, CA 90071.
Telephone No. (323) 965-3998; Facsimile No. (213) 443-1904.

On December 18, 2014 I caused to be served the document entitled **PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S STATEMENT OF POSITION REGARDING RECEIVER'S MOTION FOR APPROVAL OF SALE OF 504/FMLP LOAN PORTFOLIO AND NON-SBA LOANS (Dkt. No. 988)** on all the parties to this action addressed as stated on the attached service list:

[X] **OFFICE MAIL:** By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

[] **HAND DELIVERY:** I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

[] **UNITED PARCEL SERVICE:** By placing in sealed envelope(s) designated by United Parcel Service ("UPS") with delivery fees paid or provided for, which I deposited in a facility regularly maintained by UPS or delivered to a UPS courier, at Los Angeles, California.

[X] **ELECTRONIC MAIL:** By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

[X] **E-FILING:** By causing the document to be electronically filed via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

[] **FAX:** By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct.

Date: December 18, 2014

/s/ Javier Delgadillo
Javier Delgadillo

SEC v. SMALL BUSINESS CAPITAL CORP, et al.
United States District Court – Northern District of California
San Jose Division
Case No. 5:12-CV-03237-EJD
LA-4141

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